In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1314

GARWIN CORPORATION, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The Board's supplemental decision and order (Pet. App. 7–16, 4–6) are reported at 169 NLRB No. 154. The order of the court of appeals enforcing the Board's order (Pet. App. 1) is not officially reported. The Board's initial decision and order are reported at 153 NLRB 664, and the opinion of the court of appeals enforcing that order in part is reported at 374 F. 2d 295. The orders of this Court denying petitions for writs of certiorari to review the earlier decision of the court of appeals are reported at 387 U.S. 942.

352-482—69

JURISDICTION

The judgment of the court of appeals (Pet. App. 2) was entered on February 28, 1969. The petition for a writ of certiorari was filed on April 25, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an employer who moves his plant to evade a bargaining obligation may be required as a remedy for this unfair labor practice (1) to supply the union with which he was required to bargain with a list of names and addresses of all employees at the new plant, and to keep it current for one year; (2) to grant the union reasonable access to plant bulletin boards during that year; and (3) to permit union organizers access to plant parking lots and approaches during nonworking time, again during that year.

STATUTE INVOLVED

The relevant portion of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*) is set forth in the Appendix to the petition (Pet. App. 3).

STATEMENT

A. THE BOARD'S ORIGINAL DECISION AND ORDER

The Board found that petitioners ("the Employer") violated Section 8(a) (1), (3), and (5) of the Act by closing their plant in New York City, discharging their employees, and moving their operations to an *alter ego* in Miami, Florida for the purpose of depriving employees of rights guaranteed by Section

7 of the Act and to avoid bargaining with Local 57, International Ladies' Garment Workers' Union, AFL–CIO, the collective bargaining representative of its employees. The Board also found an independent violation of Section 8(a) (5) and (1) of the Act in the Employer's failure to consult and bargain with the Union about its decision to move its operations. The findings were based upon direct evidence of anti-union bias and of unremitting hostility toward the Union. The evidence showed that the move stemmed from the Employer's refusal to accept the bargaining relationship imposed by the Act, and that the Employer meant to keep the benefits of its escape from the Union after its move. 153 NLRB 664, 676–680; 374 F. 2d 295, 298–299 (C.A.D.C.).

To remedy these unfair labor practices, the Board ordered, *inter alia,* that the Employer bargain with the Union in Florida even though the Union had not established that it represented a majority of the employees there. 153 NLRB at 666–667. The court of appeals sustained the Board's unfair labor practice findings and enforced its order with the single exception of this bargaining requirement. It remanded this aspect of the Board's remedy to the Board for further consideration. 374 F. 2d 295, 304 (C.A.D.C.). Petitions for writs of certiorari filed by all parties to the case—the Union, the Employer, and the Board—were thereafter denied by this Court. 387 U.S. 942.

B. THE BOARD'S SUPPLEMENTAL DECISION AND ORDER

Upon reconsideration, the Board noted that the court of appeals had rejected the unconditional bar-

gaining order at the Florida location because it deprived the Florida workers of their basic right freely to select a bargaining agent. Accordingly, the Board sought to devise "a remedy * * * adapted to the Florida operation which will preclude [the Employer] from achieving the fruits of [his] unfair labor practices, yet do so in a manner accommodating the freedom of choice of employees at that location" (Pet. App. 9). It concluded that this objective could be achieved "by opening channels of communication between the Union and employees closed by [the Employer's] flagrant violations of the Act, and by requiring immediate resumption of the bargaining relationship upon proof of majority" (Pet. App. 11). The Board therefore ordered the Employer to furnish the International Ladies' Garment Workers' Union, upon request, with the names and addresses of all employees at its Florida plant and to keep that list current for one year; to grant that Union reasonable access to plant bulletin boards for one year; to permit employees at the Florida plant access to union organizers on plant parking lots and approaches, during nonworking time, for one year; and to bargain with the Union upon proof that a majority of the Florida employees have designated it as their representative (Pet. App. 9–10). In a *per curiam* order, the court of appeals summarily enforced the Board's supplemental order (Pet. App. 1–2).

ARGUMENT

The decision of the court below is clearly correct. There is neither conflict nor any other occasion for further review.

1. The remedies enforced by the court below are well within the broad remedial power conferred upon the Board by Section 10(c) of the Act, which authorizes the Board to require an employer committing unfair labor practices "to take such affirmative action * * * as will effectuate the policies of this Act." See *Fiberboard Paper Products Corp.* v. *National Labor Relations Board,* 379 U.S. 203, 215–217. Here, the Employer's unfair labor practices deprived the Union of the support it had obtained when the plant was in New York. By opening channels of communication between the Union and the employees at the Florida location, the Board's order seeks to deprive the employer of the fruits of those unfair labor practices, to assure the employees the opportunity to communicate with the Union free from employer interference, and to afford the Union an opportunity to rebuild its support at the new location. In view of the history of past unfair labor practices, the employees would be particularly likely to fear the employer's reaction to any new attempts at organization, and need a chance to obtain the information necessary to make a reasoned choice concerning representation.

2. There is no conflict between the decision of the court below and those of the Second Circuit in the *Stevens* cases. *J. P. Stevens & Co.* v. *National Labor Relations Board,* 380 F. 2d 292 (C.A. 2), certiorari denied, 389 U.S. 1005 (*Stevens I*); *Textile Workers Union* v. *National Labor Relations Board,* 388 F. 2d 896 (C.A. 2), certiorari denied, 393 U.S. 836 (*Stevens II*). In *Stevens I,* the Second Circuit denied enforcement of a provision giving the union access to the company's

bulletin boards (380 F. 2d at 305), while in *Stevens II* it enforced a bulletin board requirement but not a requirement that the company furnish a list of the employees' names and addresses (388 F. 2d at 905–906). However, the court made plain that its decisions were based, not on the Board's lack of power to impose such requirements, but on the ground that they were inappropriate in the particular circumstances there presented (see 380 F. 2d at 305; 388 F. 2d at 905–906). Since the facts of the present case are different from those in the *Stevens* cases, the holdings in those cases are not controlling here.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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